IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4273 of 2007()

CRA. 126 OF 2005 ON THE FILE OF ADDL. SESSIONS COURT, ADHOC-II, KALPETTA
C.C.NO. 226 OF 2003 OF THE J.F.C.M. I, S. BATHERI

REVN. PETITIONER: APPELLANT/ACCUSED:

MOHANAN, S/O.SANKARAN,
KANDAMALA COLONY, VELIYAMBAM, NADAVAYAL AMSOM,
DESOM, WAYANAD DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA REP. BY PUBLICL
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. C.M. NAZER

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 4273 of 2007

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Dated: 01-12-2007

ORDER

The revision petitioner who was the accused in C.C. 226 of 2003 on the file of J.F.C.M.-II, Sulthan Batheri for offences punishable under Sections 323 and 324 I.P.C. challenges the conviction entered and the sentence passed concurrently by the courts below for an offence punishable under Sec. 323 I.P.C.

2. The case of the prosecution can be summarised as follows:-

On 19-7-2003 at about about 10.30 p.m. when P.W.1 (Omana) went to the reserve forest at Chullikadu in Kuppadi range Naikuppa Division for collecting firewood, the accused on account of previous enmity between him and P.W.1, voluntarily caused hurt to P.W.1 by beating her with MO1 stick and when P.W.1 fell down he kicked her resulting in P.W.1 sustaining injuries. The accused has thereby committed the offences punishable under Sections 323 and 324 I.P.C.

3. On the side of the prosecution 5 witnesses were examined as P.Ws 1 to 5 and 5 documents were marked as Exts.P1 to P5 and a wooden stick was marked as MO1.

4. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution. He did not adduce any defence evidence when called upon to do so. The J.f.C.M.-II, Sulthan Bathery, after trial, as per judgment

dated 25-4-2005 found the revision petitioner guilty of the offences and sentenced him to simple imprisonment for three months under Sec. 323 I.P.C. and simple imprisonment for one year under Section 324 I.P.C.

5. On appeal preferred by the revision petitioner as Crl. Appeal No. 126 of 2005 before the Sessions Judge, (Adhoc) II, Kalpetta the Addl. Sessions Judge as per judgment dated 8-06-2007 acquitted the revision petitioner of the offence punishable under Sec. 324 I.P.C. but confirmed the conviction and sentence under Section 323 I.P.C. Hence, this Revision.

6. Eventhough the learned counsel appearing for the revision petitioner assailed on various grounds the conviction recorded by the courts below concurrently, in as much as the conviction was recorded after a careful evaluation of the oral and documentary evidence in the case, I do not find any good reason as to why the conviction should be dislodged. In the absence of any infirmity in the appreciation of evidence by the courts below , this Court sitting in revision will be loathe to interfere with the said conviction, which is accordingly confirmed.

7. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioner. The facts of the case will show that the revision petitioner does not deserve penal servitude by way of incarceration for the offence punishable under Section 323 I.P.C. It appears that the courts below have been insensitive to the legislative mandate under Section 357 Cr.P.C. since no compensation appears to have been awarded to P.W.1 the

injured. (See the pronouncement of the Supreme Court in **Hari Kishan and State of Haryana v. Sukhbir Singh and Others - AIR 1988 SC 2126)** I am, therefore, of the view that interests of justice will be adequately met by imposing a revised sentence including compensation. Accordingly, for the conviction under Sec. 323 I.P.C the revision petitioner is sentenced to imprisonment till the rising of the court and to pay a sum of Rs. 3,000/- by way of compensation to P.W.1, the injured under Sec. 357 (3) Cr.P.C. The compensation amount shall be paid within 45 days from today, the revision petitioner shall suffer simple imprisonment for 20 days b y way of default sentence.

In the result, this revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR,
(JUDGE)

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